

EXHIBIT 10

1 THE HONORABLE STEVEN GONZALEZ
2
3
4
5
6RECEIVED
OCT - 9 2004
KELLER ROHRBACK, L.L.P.

7 SUPERIOR COURT OF WASHINGTON IN AND FOR KING COUNTY

8 JERRY COOPER, INC., a Washington corporation d/b/a COLOR ONE PHOTOLAB, on behalf of themselves and all others similarly situated,	9) CLASS ACTION
10)	11) No. 04-2-12577-4SEA
11) Plaintiffs,	12) [PROPOSED]
12) v.	13) AMENDED ORDER GRANTING PLAINTIFFS' MOTION FOR CLASS CERTIFICATION PURSUANT TO CR 23(B)(2)
13) SUNSET CHEVROLET, INC.,	14)
14) Defendants.	

15 Before this Court and the Honorable Steven Gonzalez is Plaintiff's Motion for an Order
 16 pursuant to Rule 23(b)(2), or in the alternative Rule 23(b)(3), of the Washington Rules of Civil
 17 Procedure, to maintain the above-entitled action as a Class Action.

18 The Court has considered Plaintiffs' Motion, together with supporting exhibits and
 19 declarations, Defendant's failure to oppose the motion, Plaintiffs' Reply and supporting
 20 declaration, and has heard arguments of counsel.

21 The Court makes the following Findings of Fact with respect to Plaintiffs' Motion:

- 22 1. Plaintiffs and the proposed Class meet all of the requirements of CR 23(a):
 - 23 (a) The proposed Class is so numerous that joinder is impracticable given
 24 that their numbers are over ~~one thousand, four hundred~~. SG
 - 25 (b) The proposed Class shares common questions of law and fact because
 26 the Defendants allegedly engaged in a common course of conduct toward Plaintiff and proposed Class members.
 - 27 (c) The Class Representative's claims are typical of the Class because they arise from the same alleged course of conduct and are based on the same

ORDER GRANTING PLAINTIFFS' MOTION FOR CLASS
 CERTIFICATION PURSUANT TO CR 23(B)(2) - 1

N:\CLIENTS\25589\39\PLEADINGS\AMENDEDCLASSORDER.DOC

ORIGINAL

LAW OFFICES OF
KELLER ROHRBACK L.L.P.
 1201 THIRD AVENUE, SUITE 3200
 SEATTLE, WASHINGTON 98101-3052
 TELEPHONE: (206) 623-1900
 FACSIMILE: (206) 623-3384

1 legal theories.

2 (d) The Class Representative and its counsel will fairly and adequately
3 protect the interests of the Class.

4 2. Plaintiff and the proposed Class satisfy the requirements of CR 23(b)(2):

5 (a) The Defendants have allegedly acted or refused to act on grounds
6 generally applicable to the proposed Class, thereby making appropriate
7 final injunctive relief or corresponding declaratory relief with respect to
8 the class as a whole.

9 (b) The damages that the proposed Class seek are incidental to the primary
10 claim for injunctive or declaratory relief because they flow directly from
11 liability to the class as a whole and are awarded automatically after
12 liability is established based on objective standards rather than complex
13 individual determinations.

14 It is, accordingly, hereby ORDERED, ADJUDGED AND DECREED:

15 1. Plaintiffs' Motion for Class Certification is hereby GRANTED.

16 2. This action shall be maintained as a Class Action under CR 23(b)(2), or in the
17 alternative CR 23(b)(3), on behalf of the following National Class who have a claim under the
18 Telephone Consumer Protection Act of 1991 ("TCPA"), 47 U.S.C. § 227 *et seq.*:

19 All persons or entities that received an unsolicited advertisement
20 promoting 2000 model year clearance demo specials via facsimile from
21 Defendant.

22 3. This Class includes a sub-class of persons who reside in Washington State
23 (hereinafter "Washington Subclass") who have claims under the Washington Unsolicited
24 Telefacsimile statute ("WUTS"), RCW 80.36.540, which constitutes a *per se* violation of the
25 Washington Consumer Protection Act ("WCPA"), RCW 19.86.020. The Washington Subclass
includes:

26 All persons or entities residing in Washington State that received an
27 unsolicited advertisement promoting 2000 model year clearance demo
specials via facsimile from Defendant.

4. Judgment in this action, whether or not favorable to the aforesaid Class or any
member thereof, shall include all members of said Class.

5. Plaintiff Jerry Cooper, Inc., d/b/a Color One Photolab is appointed Class

ORDER GRANTING PLAINTIFFS' MOTION FOR CLASS
CERTIFICATION PURSUANT TO CR 23(B)(2) - 2

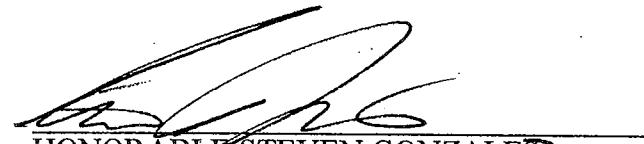
N:\CLIENTS\25589\39\PLEADINGS\AMENDEDCLASSORDER.DOC

LAW OFFICES OF
KELLER ROHRBACK L.L.P.
1201 THIRD AVENUE, SUITE 3200
SEATTLE, WASHINGTON 98101-3052
TELEPHONE: (206) 623-1900
FACSIMILE: (206) 623-3384

1 Representative.

2 6. Keller Rohrback, LLP and Williamson & Williams are hereby appointed and
3 designated as counsel for the above-mentioned Class and are authorized to act on behalf of the
4 members of the Class.

5 DONE IN OPEN COURT this 27th day of September, 2004.

6 
7
8 HONORABLE STEVEN GONZALES

9 Presented by:

10 KELLER ROHRBACK L.L.P.

11 By _____
12 Mark A. Griffin, WSBA #16296

13 Rob Williamson, WSBA #11387
14 WILLIAMSON & WILLIAMS

15 *Attorneys for Plaintiff and the Proposed Class*

16
17
18
19
20
21
22
23
24
25
26
27
ORDER GRANTING PLAINTIFFS' MOTION FOR CLASS
CERTIFICATION PURSUANT TO CR 23(B)(2) - 3

N:\CLIENTS\25589\39\PLEADINGS\AMENDEDCLASSORDER.DOC

LAW OFFICES OF
KELLER ROHRBACK L.L.P.
1201 THIRD AVENUE, SUITE 3200
SEATTLE, WASHINGTON 98101-3052
TELEPHONE: (206) 623-1900
FACSIMILE: (206) 623-3384